

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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| STENIO and RAQUEL DESOUZA, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | |
| | : | CIVIL ACTION NO. 05-787 |
| J.N. CARPENTRY, INC., et al., | : | |
| | : | |
| Defendants. | : | |
| | : | |

**MOTION OF DEFENDANT, J.N. CARPENTRY, INC.
FOR LEAVE TO FILE THIRD PARTY COMPLAINT**

Pursuant to Fed. R.Civ.P.14(a), Defendant J.N. Carpentry, Inc., by and through its attorneys, files this Motion for Leave to File Third Party Complaint against the proposed Third Party Defendants Segoes Carpentry, Inc., Faiao Construction, Inc., and Layne Thomas Builders, Inc., and in support thereof, avers as follows:

1. Defendant, J.N. Carpentry, Inc. (hereinafter referred to as “Moving Defendant”) is a New Jersey Corporation with its principal place of business at 108 Grant Street, Riverside, New Jersey, 08074.

2. Upon information and belief, the proposed Third Party Defendant, Faiao Construction, Inc., is a business entity with a registered office at 3001 Rte. 130 South, Apt. 55K, Delran, New Jersey, 08075.

3. Upon information and belief, the proposed Third Party Defendant, Layne Thomas Builders, Inc., is a Delaware corporation, with a principal place of business at 120 West Market Street, Suite B, Wilmington, Delaware, 19804.

4. Upon information and belief, the proposed Third Party Defendant, Segoes Carpentry, Inc., is a business entity with a principal place of business at 106 Grant Street, Riverside, New Jersey 08074.

5. In their Complaint, Plaintiffs Stenio and Raquel DeSouza, assert that various acts of negligence on the part of this Moving Defendant were the proximate cause of Plaintiffs' injuries.

6. On or about August 28, 2006, this Moving Defendant filed an Answer to Plaintiffs' Complaint, denying all allegations of negligence on behalf of J.N. Carpentry, Inc.

7. Upon information and belief, this incident arises out of a construction site accident that took place on or about November 17, 2003, at or near 100 Cindy Drive, Newark, Delaware 19702.

8. On or about November 17, 2003, the proposed Third Party Defendants Segoes Carpentry, Inc., Faiao Construction, Inc., and Layne Thomas Builders, Inc., were contractors and/or subcontractors involved in the construction project on which Plaintiff Stenio DeSouza alleges he suffered injuries which are the subject of this litigation.

9. Under Fed. R.Civ.P.14(a), "At any time after commencement of the action, a defending party, as a third-party plaintiff, may cause a Summons and Complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff."

10. Through the course of discovery and investigation related to this matter, this Moving Defendant has become aware of three contractors and/or subcontractors who were involved in the construction work Plaintiff Stenio DeSouza was performing on the date of the incident which is the basis for the present suit, namely the proposed Third Party Defendants Segoes Carpentry, Inc., Faiao Construction, Inc., and Layne Thomas Builders, Inc.

11. If the allegations in Plaintiffs' Complaint are established and proven at trial, those allegations being specifically denied by this Moving Defendant, then any damages alleged to have been sustained by the Plaintiffs were caused in whole or in part by the fault, negligence, and/or carelessness, and/or breach of contract of the proposed Third Party Defendants Segoes

Carpentry, Inc., Faiao Construction, Inc., and Layne Thomas Builders, Inc., and without any fault or negligence of this Moving Defendant, and, therefore, the Plaintiffs should recover such damages directly from the proposed Third Party Defendants.

12. As a result of the foregoing and/or contractual indemnification provisions, this Moving Defendant is further entitled to recovery from, and over against the proposed Third Party Defendants, Segoes Carpentry, Inc., Faiao Construction, Inc., and Layne Thomas Builders, Inc., for indemnification and/or contribution, and as damages for breach of contract, for all sums as may be adjudicated and/or awarded against this Moving Defendant, as well as counsel fees and expenses.

13. The filing of the Joinder Complaint will not result in prejudice to those entities already parties to this action, as this matter is in the early stages of discovery.

14. Furthermore, given the very nature of the reliance on subcontractors in the construction business, any delay based on this Moving Defendant's recent discovery of the identity of the proposed Third Party Defendants, is both reasonable and excusable.

15. Additionally, in written correspondence, counsel for this Moving Defendant informed all counsel of record in this matter of the intention to file this Motion to Join, and has not received any objection or opposition.

16. This Moving Defendant has prepared a draft Joinder Complaint naming Segoes Carpentry, Inc., Faiao Construction, Inc., and Layne Thomas Builders, Inc. as Third Party Defendants. A true and correct copy of Moving Defendant's draft Joinder Complaint is attached as Exhibit "A."

WHEREFORE, Defendant, J.N. Carpentry, respectfully requests that this Honorable Court grant its Motion for Leave to File a Third Party Complaint, and permit the filing and service of the attached Third Party Complaint against the proposed Third Party Defendants Segoes Carpentry, Inc., Faiao Construction, Inc., and Layne Thomas Builders, Inc. who are

solely liable to the Plaintiffs; jointly and/or severally liable to the Plaintiffs; or liable over to the Moving Defendant by way of the basis of contribution and/or indemnity.

Respectfully submitted,

WRIGHT & O'DONNELL, P.C.

/s/ George T. McCool, Jr.

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Attorneys for Defendant/Third Party
Plaintiff, J.N. Carpentry, Inc.

Dated: March 30, 2007

CERTIFICATE OF SERVICE

I, George T. McCool, Jr., hereby certify that a true and correct copy of the foregoing Third-Party Complaint was served on this 30th day of March 2007, upon the below listed counsel of record via electronic filing and/or regular mail:

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DATED: March 30, 2007

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